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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/150855

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by Department of Health Services, Disability Determination Bureau (DDB) in regard to Medical Assistance, a hearing was held on September 05, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

NOTE: The record was held open to give Petitioner an opportunity to submit additional medical records. On September 19, 2013, Petitioner faxed 48 pages of medical records, including the fax coversheet. The fax has been marked as Exhibit 2 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.

2. On January 15, 2013, Petitioner filed an application with the Social Security Administration (SSA) for Social Security Disability Income (SSDI), alleging disability based upon Irritable Bowel Syndrome (IBS), pain, migraines, fibromyalgia, arm injury, depressions, microscopic uncreative colitis, anxiety, depression, chronic pain syndrome, chronic migraines, fibromyalgia and permanent partial disability in arm and shoulder. (DDB file; Testimony of Petitioner)
3. On April 10, 2013, the SSA denied Petitioner's application for SSDI benefits. (Id.)
4. On May 9, 2013, Petitioner filed an application for disability-based Medicaid benefits, alleging disability based upon IBS, colitis, depression, chronic pain, migraines, fibromyalgia, arm and shoulder pain, endometriosis, tremors and celiac disease. (DDB file; Testimony of Petitioner)
5. On May 17, 2013, the DDB denied Petitioner's application, finding her to be NOT disabled for purposes of receiving Medicaid benefits. (Id.)
6. In June 2013, Petitioner filed for reconsideration of both the SSA denial and the DDB denial. (DDB file; Testimony of Petitioner)
7. On July 22, 2013, the SSA again denied Petitioner's application for SSDI benefits. (Id.)
8. On July 23, 2013, the DDB denied Petitioner's application for Medicaid benefits and forwarded the file to the Division of Hearings and Appeals for review.

### DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
  - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

Here, Petitioner applied for Medicaid benefits alleging the same disabling conditions that she listed in her application for SSDI benefits. The SSA denied Petitioner's request for SSDI benefits within 12 months of her application for Medicaid.

Petitioner asserts that her condition has changed since the most recent denial of SSDI benefits in July 2013. However, the medical documentation submitted by Petitioner does not clearly establish that her condition has changed since the July 2013 denial. Having reviewed the records, there do not appear to be any specific comments by the treating professionals indicating Petitioner's condition has changed.

Based upon all of the foregoing, it is found that the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

Petitioner should note that beginning October 1, 2013, she can apply for the Obamacare subsidy and go insurance shopping. The Obamacare portal info is: [REDACTED] or she can go on-line at [www.healthcare.gov](http://www.healthcare.gov).

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of September, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 26, 2013.

Kenosha County Human Service Department  
Disability Determination Bureau